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ARIZONA ATTORNEY GENERAL

July 22, 1953

Opinion No. 53-138

TO: The Honorable T. J. Mahoney  
Pinal County Attorney  
Florence, Arizona

RE: Public Works Reserve Fund

QUESTION: Under Section 73-505b, A.C.A.  
Chapter 111, Laws of 1953, may  
receipts from a source other  
than that provided for speci-  
fically in this section be  
deposited in the public works  
reserve fund?

House Bill 70, Twenty-First Legislature, First Regular  
Session, which became Chapter 111 of the Laws of 1953, in its  
original form reads as follows:

"73-505b. PUBLIC WORKS RESERVE FUND. (a) Not-  
withstanding any provision of general, special  
or local law inconsistent herewith, any city or  
county shall have power to establish and maintain  
a public works reserve fund to provide for the  
payment of all or part of the cost of a long  
range program of local public improvements and  
betterments, to be executed by the city or county  
or by any public agency which the city or county  
is authorized by law to assist, including capital  
acquisition, replacement, additions, improvements,  
construction, reconstruction, deferred maintenance,  
administrative and other expenses of local planning  
and development agencies and such other purposes as  
are authorized by law. The creation and maintenance  
of such fund shall be deemed a proper public purpose  
for which the moneys of the political subdivision  
may be expended and appropriated. There may be  
included in the annual tax levy of the political  
subdivision such sum as it may deem necessary for  
the uses and purposes of the fund. The fund shall  
consist of all moneys appropriated, transferred or

credited thereto by budgetary provision or otherwise. All unexpended balances of appropriations from the fund remaining after the appropriations lapse according to law shall revert to the fund." (Emphasis supplied)

Chapter 111 of the Laws of 1953 (House Bill 70) in its final form as passed by the Twenty-first Legislature during the First Regular Session reads as follows:

"73-505b. Public works reserve fund. (a) Each county, city or town, is authorized to establish and maintain a public works reserve fund for paying all or part of the cost of a program of local public improvements and betterments of public structures, highways, roads, streets, sewers, airfields and parks, water lines and devices for protection of property, including construction and reconstruction, additions thereto, and replacements thereof, for execution by such county, city or town, or by any public agency which such county, city or town is authorized to assist by any law. There may be included in the annual tax levy of such county, city or town, all other laws in conflict herewith notwithstanding, a tax of not exceeding two and one-half mills on the dollar of assessed valuation of the property within such county, city or town, except such as may be exempt, for the uses and purposes of the fund. All unexpended balances of appropriations from the fund remaining after the appropriations lapse according to law shall revert to the fund. The fund established pursuant to this Act shall be kept separate and apart from all other funds." (Emphasis supplied)

It will be noted that the underlined part in House Bill 70 in its original form was omitted from the final act. This omitted part reads as follows:

"The fund shall consist of all moneys appropriated, transferred or credited thereto by budgetary provision or otherwise."

In its stead two provisions have been substituted in the Act as passed. These provisions read as follows:

"There may be included in the annual tax levy of such county, city or town, all other laws in conflict herewith notwithstanding, a tax of not exceeding two and one-half mills on the dollar of assessed valuation of the property within such county, city or town, except such as may be exempt, for the uses and purposes of the fund.\* \* \*The fund established pursuant to this Act shall be kept separate and apart from all other funds."

The bill as originally drawn specified no definite tax from which the moneys were to be drawn to supply this fund, and in the original bill transfers from other sources were clearly contemplated. However, in the final bill, there was a proviso for a specific amount of tax from which the fund in question was to be fed. The final bill stated clearly that this fund was to be kept separate and apart from all other funds. This fund was set up for a specific purpose and a specific source was set up in the same bill to supply this fund. In view of the omission, from the Act as passed, of the provision in the original bill which contemplated transfers to this fund from other sources, and in view of the specific tax to supply this fund which was set up in the final bill, it is the considered opinion of this office, that no receipts from sources other than those specifically provided for in Chapter 111, Laws of 1953, House Bill 70, may be deposited in the public works fund.

It should be noted in passing that another source of moneys for the public works fund is provided for in Section 2 of Chapter 111, Laws of 1953.

"Sec. 2.\* \* \*Any balances remaining in any post war public works reserve fund, created under the provisions of the Acts herein repealed, shall be transferred to the public works reserve fund of the political subdivision entitled thereto."

This paragraph reinforces the opinion rendered above. It provides that any balances remaining in the post war fund shall be transferred to the public works reserve fund when it is created. This balance together with the tax set up in Section 73-505b, supra, were clearly meant to be the sole sources of moneys for the fund created by this Act.

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The Attorney General

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